

**PROPERTY ASSESSMENT APPEAL BOARD  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2019-103-10063C

Parcel No. M1511-01A

**Riverside Holdings,**

Appellant,

vs.

**City of Davenport Board of Review,**

Appellee.

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**Introduction**

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on July 8, 2020. Derrick Nix represented Riverside Holdings. Attorney Theodore Craig represented the City of Davenport Board of Review.

Riverside Holdings owns a commercial property located at 1645 West Kimberly Road, Davenport, Iowa. Its January 1, 2019, assessment was set at \$687,040, allocated as \$135,000 in land value and \$552,040 in building value. (Ex. A).

Riverside Holdings petitioned the Board of Review contending the assessment was not equitable as compared with assessments of other like property and that it was assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(1 & 2) (2019). (Ex. C). The Board of Review denied the petition. (Ex. B).

Riverside Holdings then appealed to PAAB re-asserting its claim the assessment was not equitable and also claiming there was an error in the assessment as well as fraud or misconduct in the assessment. § 441.37(1)(a)(1, 4, & 5) (2019).

## **General Principles of Assessment Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

## **Findings of Fact**

The subject property is assessed as a one-story, neighborhood shopping center. It was built in 2014 and has four bays. It is listed as having 5334 square feet of gross building area. The improvements are listed in normal condition with a 3+00 Grade (good quality). The 0.517-acre site is also improved with 9600 square feet of asphalt paving. (Ex. A). There is one tenant in the subject property and three of the bays are vacant. The record states the Board of Review applied 11% obsolescence to the building and paving in 2016, which is still being applied.

The property record card shows the subject was assessed as of January 1, 2018, for \$494,120, allocated as \$135,000 in land value and \$494,120 in improvement value. The assessment was increased in 2019 to \$687,040, allocated as \$135,000 in land value and \$552,040 in improvement value. This represents an overall increase of 39% and an increase to the improvement value of 53.7%. (Ex. A).

Derrick Nix and Patrick Peacock testified for Riverside Holdings. Christina Conley testified on behalf of the Board of Review.

Conley is the Industrial/Commercial Supervisor and a Commercial Appraiser with the City of Davenport Assessor's Office and testified about the subject's assessment. She testified that for the 2018 assessment 3525 square feet of the subject building were considered to have no interior finish and no concrete floor, and received negative adjustments for not being complete. She stated for the 2019 assessment only 1175 square feet of the building were considered to lack finish and concrete floor. Nix agrees the changes to the improvements reflected on the property record card for were made 2019 but believes the changes should have been reflected in his 2018 assessment. The Board of Review agreed the improvements were completed in 2017 and not reflected in the 2018 assessment. It asserts Riverside Holdings benefited by the one-year lapse in changes to the property record card and assessment.

Based on the property record card, PAAB calculates the modified unfinished adjustment results in a \$90,945 change to the building's replacement cost new (RCN) between 2018 and 2019. Had that been added in 2018 as Nix believes it should, Riverside Holdings would have been subject to an increased tax liability for property tax payments based on that assessment. In addition, the percentage increase for the property's 2019 assessment would have been lower.

Conley also explained the application of the map factor adjustment, that it considers the property type and location, that is adjusted based on sales data, and testified the same map factor adjustment was applied to all neighborhood shopping centers in the area. She stated the subject's map factor was increased from 1.0 to 1.2 in 2019. Conley recognized the lower unfinished adjustment and increased map factor would have contributed to the increase in the subject's 2019 assessment. She testified she has explained these changes to Nix.

The record reflects a positive adjustment is made to 1809 square feet of the building identified as a medical office; for the bay occupied by Riverside Family Eye Care. Nix testified he believed the bay's correct square footage is 1728 square feet, but provided no corroborating evidence supporting this assertion. He did not specify if he believed the error affected the gross building area reported on the property record card.

Patrick Peacock, 7th Ward Alderman for the City of Davenport, testified he was present in March when the property was viewed by Davenport City Assessor Nick Van Camp and Conley. Peacock recalled a conversation at that meeting wherein Nix raised a concern about the 53% increase to the subject's building value. Peacock believes the Assessor offered inconsistent answers regarding Nix's concern. While we understand Peacock considered the Assessor's answers to be contradictory, he also acknowledged he did not understand the process. We find Peacock's testimony vague and, at most, it only demonstrates a misunderstanding. He offered no opinion of value and no other testimony.

Derrick Nix described the subject property and its location. He asserts Brady Street separates the area. In his opinion, slow growth, lower rents, and higher vacancy is descriptive of the market conditions of real estate located west of Brady Street. He described the east of Brady Street area as a high growth location with higher rents and lower vacancy. He testified the 2019 assessment of the subject improvements increased by 53% from the prior assessment year. The increase is for the improvements only. He believes this is excessive given no work was completed on the building during 2018 and considering the existing vacancy.

Nix testified Joe Vargas, a previous appraiser for the Davenport City Assessor's office, told him that "if he didn't like his assessment to sell his building". Nix was offended by the statement and believes it was inappropriate. He also believes the Assessor's Office valued the property without doing a complete inspection and questions if an accurate assessment can be achieved by estimating. Nix further described at least two occasions he attempted to meet with the Assessor's Office but was refused and asserted this illustrates a lack of cooperation during the appeal process. The lack of cooperation is why he is claiming fraud or misconduct. Nix testified multiple times that he had questions he wanted answered and was interested in better understanding the assessment process. He believes the IOWA REAL PROPERTY APPRAISAL MANUAL was not used to value his property. Nix testified the property has been previously appraised, but he did not submit it as evidence here.

Conley does not agree with Nix's characterization that the Assessor's Office was uncooperative. She described meeting with Nix multiple times and having multiple phone conversations during the past couple of years. Notes on the property record card indicate employees of the Assessor's Office spoke with Nix regarding this assessment in April 2017 and April 2019. (Ex. A). She explained Nix contacted her after appealing to PAAB and asked to meet to discuss settling his appeal. She believed a settlement meeting was not needed because, in her opinion, the assessed value was accurate.

Nix submitted six comparable properties which are summarized in the following table. (Ex. 1).

Comparable	Year Built	Gross Building Area (SF)	Site Size (SF)	2019 Assessed Value	AV/SF
Subject	2014	5334	22500	\$687,040	\$129
R1 - 1800 N Division St	2007	4422	5040	\$509,430	\$115
R2 - 2406 E 53rd St	1997	7925	36585	\$953,340	\$120
R3 - 5345 Belle Ave	2016	4960	23401	\$745,430	\$150
R4 - 4730 Elmore Ave	2002	6720	43290	\$1,223,090	\$182
R5 - 5260 Northwest Bd	2005	9000	64904	\$1,328,040	\$148
R6 - 4760 Elmore Ave	2014	12008	72645	\$2,238,190	\$186

Nix described these properties as being generally in superior locations with superior tenants and yet had smaller increases to their 2019 assessments. In his opinion this supports his inequity claim. He believes the subject property should be assessed for \$430,944. (Ex. 5, p. 10).

Nix testified Comparable R1 had a lower increase in assessed value regardless of having two national tenants and three units occupied. The Board of Review asked Nix if he was aware this property sold in December 2017 for \$1,200,000 or over \$200 per square foot. Nix testified he was unaware of the per square foot price for this sale but believes the price is reasonable given its higher quality tenants. The Board of Review believes the sale demonstrates the subject property is equitably assessed. None of the other comparables have recently sold.

Nix believes Comparable R3 is a very similar building. He testified this property had better tenants and was superior in location yet only had a 4% increase in its assessed value. The Board of Review asserts this property also supports the subject is equitably assessed. The Board of Review noted Comparable R3 has an assessed value per square foot of \$150 compared to the subject's assessment of \$129 per square foot.

The Board of Review submitted four comparable neighborhood shopping centers to demonstrate the subject's assessed value was equitable, which are summarized in the following table. (Ex. F).

Comparable	Year Built	Sale Date	Gross Building Area (SF)	Sale Price	Assessed Value	SP/SF	AV/SF
Subject	2014	NA	5334	N/A	\$687,040	NA	\$129
B1 - 1432 W Locust St	2004	7/2017	6000	\$918,000	\$869,390	\$153	\$145
B2 - 1150 E Kimberly Rd	2006	12/2017	5076	\$1,210,000	\$803,640	\$238	\$158
B3 - 1430 E 52nd St	2007	4/2018	11096	\$1,250,000	\$1,151,710	\$113	\$104
B4 - 1143 E Locust St	1989	3/2019	7310	\$745,000	\$727,660	\$102	\$100

The Board of Review believes these four sales support the subject's assessment. Their sale prices were greater than the assessed value for each of the comparables, which would suggest a trend of under assessment. (Exs. F-G). Nix believes these properties generally have long-term tenants with lower vacancy.

The Board of Review notes Comparable B1 has a similar quality of construction as the subject and is slightly larger in size. All else being equal, normally a larger square footage will reduce the per square foot price. However, the Board of Review notes both the assessed value and sale price, on a per square foot basis, is higher than the subject's assessed value per square foot.

Comparable B2 is slightly superior in quality of construction and located further from the subject property than Comparable B1. The improvements were complete for Comparables B1 and B2 and would therefore be expected to have a higher per square foot assessment and sale price.

The assessed values and sale prices for Comparables B3 and B4, on a per square foot basis, are lower than the subject property. Comparable B3 is superior in quality of construction and on a larger site, but its improvements are more than double the size of the subject property. As previously noted, larger properties typically have a lower per square foot value. Further, the Board of Review reports three of the four units were vacant and unfinished.

Comparable B4 is 25-years older than the subject, has more gross building area, and is lower in quality of construction. The Board of Review believes these differences account for its lower sale price.

### **Analysis & Conclusions of Law**

Riverside Holdings contends the subject property is inequitably assessed, there is an error in the assessment, and there is fraud or misconduct in the assessment as provided under Iowa Code section 441.37(1)(a)(1, 4 & 5). Riverside Holdings bears the burden of proving its claims. § 441.21(3).

#### **Error Claim**

Riverside Holdings asserts there is an error in the assessment. § 441.37(1)(a)(4). An error may include, but is not limited to, listing errors or erroneous mathematical calculations. Iowa Admin. Code R. 701-71.20(4)(b)(4).

Nix testified one of the interior subject bays is incorrectly measured, but gave no additional evidence corroborating his assertion. He did not specify if the error affected the gross building area reported for the subject. We therefore conclude Riverside Holdings has failed to support its assertion of an error in assessment. We suggest Nix contact the Davenport City Assessor for an inspection of the subject property if he believes an error exists.

#### **Inequity Claim**

Under section 441.37(1)(a)(1), a taxpayer may claim that their property is inequitably assessed when compared to other like properties in the taxing district.

Riverside Holdings' main concern seems to be with the increase to the subject's building value. Iowa Courts have concluded, however, the "ultimate issue...[is] whether the *total* values affixed by the assessment roll were excessive or inequitable." *Deere Manufacturing Co. v. Zeiner*, 78 N.W.2d 527, 530 (Iowa 1965); *White v. Bd. of Review of Dallas County*, 244 N.W.2d 765 (Iowa 1976) (emphasis added). Thus, while we will address those concerns, we must focus on whether Riverside Holdings has demonstrated the subject's total assessment is inequitable.

Riverside Holdings focused its appeal on the assessments and the rate of change to the assessments of other properties it believes to be comparable to the subject. Under Iowa law, it is insufficient to simply compare the subject property's assessed value to the assessments of other properties or to compare the rate of change in assessments among properties to demonstrate inequity. Thus, although we recognize this was the thrust of Riverside Holdings' argument, we turn to the recognized methods for demonstrating inequity.

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Here, we find Riverside Holdings failed to demonstrate the Assessor applied an assessing method in a non-uniform manner. Riverside Holdings failed to identify that any assessing method was being applied in a non-uniform manner.

Alternatively, to prove inequity, a taxpayer may show the property is assessed higher proportionately than other like properties using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965). The *Maxwell* test provides that inequity exists when the subject property is assessed at a higher proportion of its actual value. *Id.* This is typically demonstrated by comparing prior year (2018) sales with the current (2019) assessment of the subject and comparable properties.

Riverside Holdings submitted six properties for comparison to the subject. Some had prior sales but none during 2018. Further, a showing of the subject's actual value is also required, but the subject property did not recently sell and Riverside Holdings did not offer any other evidence of its January 1, 2019 market value. Accordingly, the



*Maxwell* test cannot be completed. For the foregoing reasons, we find Riverside Holdings' inequity claim fails.

#### Fraud or Misconduct in the Assessment

We next address Riverside Holding's claim of fraud or misconduct. Under Section 441.37(1)(a)(5), a taxpayer may assert there is fraud or misconduct in the assessment, which is specifically stated. "It is not necessary to show actual fraud. Constructive fraud is sufficient." *Chicago and North Western Railway Co. v. Prentis*, 161 N.W.2d 84, 97 (Iowa 1968) (citing *Pierce v. Green*, 294 N.W. 237, 255 (Iowa 1940)). Constructive fraud may include acts that have a tendency to deceive, mislead, or violate confidence, regardless of the actor's actual motive. *In Interest of C.K.*, 315 N.W.2d 37, 42 (Iowa 1982) (quoting *Curtis v. Armagast*, 138 N.W. 873, 878 6 (Iowa 1912)). See 37 C.J.S. Fraud § 5 (2020); BLACK'S LAW DICTIONARY Fraud (11th ed. 2019). §441.37(1)(a)(5). Misconduct in an assessment "includes but is not limited to knowingly engaging in assessment methods, practices, or conduct that contravenes any applicable law, administrative rule, or order of any court or other government authority." §§ 441.9, 441.37(1)(a)(5).

In his testimony Nix explained several ways he felt he was wronged. He described being rejected for meetings and statements he found offensive. He has not specified which law, rule, or order has been violated. Other than his testimony, Nix submitted no corroborating evidence to support his claim of fraud or misconduct. We do not find these blanket allegations, without more, are sufficient to demonstrate fraud or misconduct. After fully considering Nix's contentions, we conclude he failed to establish fraud or misconduct in the assessment.

As a general matter, in response to Nix's allegations and based on our experience hearing property assessment appeals, we find that the method by which the Assessor's Office arrived at the subject property's value is consistent with the practices in other jurisdictions and compatible with Iowa law. The testimony indicated the subject's assessment was arrived at by consideration of sales as required by section 441.21(1)(b) and the use of the IOWA REAL PROPERTY APPRAISAL MANUAL as required

under section 441.21(1)(h). We note that while Nix complained about the Assessor's Office practice of estimating the listing of this property, the record and testimony also does not reflect that he requested an inspection and he has not shown an error in the listing of the property.

We have reviewed the subject's property record card in conjunction with the MANUAL and find the Assessor has properly applied the cost figures from the MANUAL. 2008 IOWA REAL PROPERTY APPRAISAL MANUAL pp. 4-16, 6-30 to 6-31, *available at* <https://paab.iowa.gov/2008-iowa-real-property-appraisal-manual>. Manual cost figures were used and then adjustments for grade (quality of construction), depreciation, obsolescence, and map factor were applied to arrive at the Assessor's value for the subject's building. For 2019, the application of the Manual's cost figures and the aforementioned adjustments resulted in a 53% increase in the subject's building value. Although a large increase, the record reflects that the subject's 2019 assessment is supported by the per square foot sale prices and assessments of the comparables submitted by both parties. While Riverside Holdings did not raise a claim of over assessment under section 441.37(1)(a)(2), we note it did not offer any comparable sales, an income approach, or a cost approach indicating the subject's assessment is excessive or otherwise erroneous.

Viewing the record as a whole, we find Riverside Holdings has failed to support its claims.

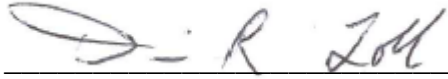
### **Order**

PAAB HEREBY AFFIRMS the City of Davenport's Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

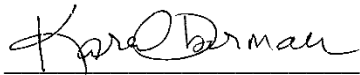
Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2019).



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

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